OBSERVATIONS

ON THE

INUTILITY OF GRAND JURIES,

AND

Suggestions

FOR

THEIR ABOLITION.

SECOND EDITION.

TO WHICH ARE ADDED

A FEW REMARKS UPON THE NECESSITY OF EMPOWERING CORONERS TO TAKE BAIL.

BY

W. C. HUMPHREYS,

ATTORNEY-AT-LAW.

LONDON:
BENNING & CO., LAW BOOKSELLERS,
43, FLEET-STREET.

1857.

LONDON:
PRINTED BY WILLIAM TYLER, BOLT-COURT,
FLEET-STREET.

PREFACE

TO THE SECOND EDITION.

In the year 1842 I ventured to call the attention of "Those who make the laws," as well as "Those who administer them," to that tribunal known as a component part of the Criminal Law of England by the title "Grand Jury."

I did so, hoping thereby to provoke an investigation, the result of which I felt must induce those who administer, to suggest to those who make the laws such a substitute for the Grand Jury as should warrant its abolition immediately, or within a period not far distant. My efforts so far had effect as to induce inquiry; the Grand Jury system became the subject of discussion; it was inquired into by a Commission (*a*) from Her Majesty, and also by a Committee of the House of Commons. It was commented upon by the public press (*b*); it was observed upon by Judges from the Bench (*b*); it was complained of by Counsel at the Bar, in cases where it was shown to be a crying evil (*b*); and it was the subject of legislative effort in two successive administrations; the

(*a*) *See* Evidence extracted from Report in Appendix B., p. 41 to p. 58.
(*b*) *See* Appendix A.

law officers of each making some endeavour to get rid of it by statute (*a*); but it still remains a useless—nay, a mischievous—incubus on the machinery of the Criminal Justice of the country. I have letters innumerable upon the subject, and inquiries are made, "When is the Grand Jury to cease?" I am in that position which enables me only to ask and not to answer that question with confidence; but, by the request of the many who think that the next session of Parliament ought not to pass over without another effort being made, I am induced again to remind those in power of the evils of the system which I took leave in 1842 to point out for their consideration; and I am emboldened the more to do so from the multitude of opinions concurring with my own which have gone forth to the public since the publication of my First Edition, from the Bench, the Bar, and the Press, some of which opinions I have from time to time collected and formed into Appendices (*b*) to the following, my own, "Observations."

(*a*) Bill brought into the House of Commons, in 1849, by the Attorney-General and Solicitor-General, intituled, "A Bill to facilitate the Administration of Justice at the Central Criminal Court, and at Sessions of the Peace in and near the Metropolis." *Also*, Bill brought into the House of Commons, 19th April, 1852, by the Attorney-General of that day, Mr. Secretary Walpole, and Sir W. Jolliffe, which was amended in Committee, and again brought before the House in the month of May, intituled, "A Bill to render it unnecessary to summon Grand Juries within the Metropolitan District, and for the Amendment of the Criminal Law in other particulars."

(*b*) *See* Appendix A. and Appendix B., p. 29 to 58, *post*.

The Bills which were introduced into Parliament, like many, very many, important matters which are brought before the Legislature, were, from necessity, obliged to give way to others deemed of more immediate and pressing importance; and so each session was lost without the Bills, or either of them, becoming the Statutes of the Realm.

It is said that attempts will be renewed at the forthcoming session to establish the office of Public Prosecutor. If such an office be created, it would very much relieve those who have the duties of it to perform, to have such duties lessened by the extinction of the Grand Jury; but whether there be or not a Public Prosecutor to enjoy the blessing, its abolition will be a great boon to the public at large.

While considering the subject of Grand Juries, my mind has occasionally turned upon the Jurisdiction of the Coroner. That officer has considerable power; he is intrusted with the duty of inquiring into the cause of death, when requisite; the importance of that duty is enhanced by his right to summon and compel the attendance of a Jury, to assist him in the investigation, which Jury has the responsibility of placing their fellow-creatures in the jeopardy of trial, if the death of one shall be found to have been caused by the hand of another; and the Coroner's power extends to the imprisonment of the party implicated by the finding of his own jury. Although that finding be in the absence and without the knowledge of the accused party, yet the Coroner has no power (and that is a great want) vested in him of admitting such accused party to bail. Upon the propriety of adding

that power to the others of his office, I have thought it right to submit, at the end of this pamphlet, a few remarks, under the title of "Bail by the Coroner (*a*);" hoping that Justice may be assisted by the consideration of them.

W. C. HUMPHREYS.

GILTSPUR CHAMBERS,
NEWGATE-STREET, LONDON.
January, 1857.

(*a*) *See* "Bail by the Coroner," p. 76, *post*.

INTRODUCTION

TO THE FIRST EDITION.

TO THOSE WHO MAKE THE LAWS, AND TO THOSE WHO ADMINISTER THEM.

THERE are many persons high in authority, who have every disposition to correct evils when pointed out to them, but who, from their exalted stations, have little knowledge of the machinery by which the Law, and particularly the Criminal Law, is put in motion. They see its operation in its matured state, that is, when the Record of Accusation is on the Judgment Seat, the Prisoner is at the Bar, and the Prosecutor and Witnesses are in the Witness Box. The proceedings are all then under the controlling eye and attentive ear of the presiding Judge, and everything goes on smoothly, regularly, and with decorum; but the preliminary workings are under no such supervision—they are performed in the secret chambers of legal business. Whether or not they be necessary or serviceable, either to the state or to the public, few stop to consider; and the "Grand Jury System" forms a main part of these preliminary workings.

That inconveniences, not to say injuries, result from that system, none who thoroughly know the system will deny; and my business has been, in the following "Observations," to point out, for the information as well as the consideration of those learned persons who administer the law, such inconveniences, in the hope that if a better mode of correcting the evils cannot be found, the remedies suggested in the following Pamphlet may be adopted. If "Those who administer the laws" will condescend to give the matter consideration, and sanction the remedies proposed, or point out others, there is little doubt that "Those who make the laws" will attend to any suggestions coming from such authority. If, by my humble and feeble efforts, I can provoke investigation, so as to effect improvement, my object will have been attained.

With this introduction, I, with great humility and respect, submit the following observations for the consideration of Those who make and Those who administer the Laws.

W. C. HUMPHREYS.

GILTSPUR CHAMBERS,
NEWGATE STREET, LONDON.
August, 1842.

GRAND JURIES.

I hope those who possess true English constitutional principle will not be startled and take alarm at the word "Juries," under the supposition that anything is to be said in this Pamphlet against that noble British safeguard, "Trial by Jury." No such thing; my war is not against the open and ever to be revered "Trial by Jury," but against the secret Inquisition, called the "Grand Jury."

The Grand Jury is an old institution, and was, perhaps, in former times, deservedly revered; but it has lived too long. It is not now as it was when originally instituted, a medium of protection for the weak against the strong. It is now strong only for screening the evil doer—weak, as a protection for the good—and useless, as an adjunct to justice. Useless! nay, more; it is a clog to justice, for it engages unnecessarily twenty-three gentlemen, for days together, from their homes and occupations, to form a break instead of a link in that chain of justice which commences with accusation and ends with judgment, and which chain should be consistent, clear, straight, always within public view, and free from all suspicion.

If I cannot prove and bring clear to the mind of every thinking man, as well legal as lay, that the Grand Jury is not only useless, but worse than useless, by assisting rather than suppressing crime, then I must submit to be styled a

mere theorist; but if I show evils which do exist, and which, if Grand Juries were abolished, would no longer exist—if I show that justice is delayed and frustrated by the continuance of the Grand Jury, then my suggestion for the abolition of Grand Juries will be worthy consideration, and its adoption may produce practical utility.

I am no advocate for reforming with a scythe—I would rather use a sickle, or a still less instrument, a pruning knife, and so go on by degrees, taking care that, by doing a small good, I commit not a great evil. Many reforms in the criminal as well as in the common law have taken place in matters the predilection for which had been deeply rooted, and the alteration or abolition of which our greatest lawyers of former days feared to meddle with lest the constitution should be endangered; and in those reforms Trial by Jury itself is not left untouched, the summary jurisdiction of the magistrate has been increased, reference in civil matters has been substituted for jury trial; the criminal law itself has been very much simplified by Lord Campbell and the late Chief Justice Jervis.

The Statutes introduced by those learned Judges (*a*) interfered with matters so thoroughly fixed, as, if they had been hinted at some years since, a deaf ear would been turned at once; although, admiring as I do the improvements which have taken place, still, having a thorough disinclination for change without advantage, I could not ask forgiveness if I allowed myself to be betrayed into a misconception as to the Grand Jury system, which I have been watching for years, the disadvantages of which I have continually seen, the benefits of which, in times as they now are, I cannot discover. I seek not, however, to destroy a fabric without suggesting a substitute, and my object in this paper, is,

---

(*a*) 11 & 12 Vic. cc. 42 & 43; 14 & 15 Vic. cc. 19 & 100.

First, to show the ill which is done by Grand Juries.

Secondly, to show that no benefit to the public is derived from Grand Juries.

Thirdly, to point out a substitute for Grand Juries; and,

Fourthly, to prove the extent of benefit which the public would derive by the change.

FIRST, the evil which is done by Grand Juries.

There is not a Middlesex Session, either at Westminster, or Clerkenwell, or a Central Criminal Court Session, or indeed any Session of the Peace within the Metropolitan District, without many indictments of various kinds being preferred, of which the parties accused have no notice until after indictment found. For felony, this is rarely, though sometimes the case, but for misdemeanors it is common, and such misdemeanors embrace a variety of offences, but principally those denominated conspiracies, perjuries, libels, nuisances, for the keeping of gaming or other disorderly houses, false pretences, assaults, common and otherwise.

The intimations given to the parties accused of such indictments being found, are two-fold. The one by warrant, sometimes openly, and at other times secretly obtained, upon which the accused is unexpectedly arrested, and conveyed to gaol. The other is by verbal or written notice, communicated by some person, whose name appears neither in nor upon the indictment, and whose mode of information is so guarded in the first instance, as to make it appear that he is altogether unconnected with prosecutor or witnesses. The object is obviously extortion where the latter mode of information is adopted, and it is not always pure when a caption upon warrant is effected.

Whether the party accused be innocent or guilty, is, for the present argument, unimportant, as in either case it is intended to prove that the Grand Jury works an evil.

First, then, suppose the party accused to be innocent, and the motive for the indictment to be malice or extortion, the latter of which is by no means an uncommon motive in prosecutions for keeping gaming or other disorderly houses. The accused man's fears are worked upon, and exposure by a criminal trial, perhaps for an infamous offence, is considered a blight to every hope, both of himself and his connections. He feels that acquittal would be certain, but still a public trial must take place, unless indeed the prosecution can be stopped. That is easily effected, because no public investigation has taken place; the case has not been before a magistrate or police court; it has only been before the Grand Jury, and the proceedings there are secret. No one knows of the matter, or of the parties, except the prosecutor and those in his interest; and if he or they move not, no one else can. Money will prevent this—money is demanded, and money is given. Thus conspiracy, false accusation, and extortion, are encouraged by the Grand Jury System. Suppose the accused to be a really guilty party, and the accuser, as well as the public, to have suffered some wrong, the offender has a much stronger stimulus for compromise than if he were innocent. The innocent man, if possessing courage enough to brave the ordeal, might hope for acquittal; the guilty man would anticipate and fear conviction. The prosecutor may be softened—friends engage themselves—money is found—entreaty prevails, and the prosecution ends by pecuniary compromise. The public offence is hushed up—the public offender not exposed or punished, and a license for crime is purchased for the pecuniary benefit of a private individual who becomes himself an offender in cheating, for his own emolument, justice of her due; and all this because the prosecuting proceedings have been *ex parte* secret, inquisitorial, and not in the face of the public, where the accuser and accused are confronted.

Thus, in instances where no preliminary investigation takes place before a magistrate, it has been my object to prove that an accused party may (innocent or guilty,) be the object of oppression, the preferring of indictments be a source of trade and profit, and the justice of the country be defeated or outraged by the working of the Grand Jury System.

In cases which undergo a preliminary inquiry by the magistrate, the uselessness of such a tribunal as a Grand Jury is manifest, and by it justice is frequently defeated; and this view of the subject applies to indictments for felony, as well as misdemeanor, and, perhaps, oftener to the former than the latter.

An accused party is apprehended; he is brought before and examined by the magistrate in a public court; his accuser and witnesses are examined before his face; the accusation is so clear, that the magistrate, a lawyer and gentleman of experience, deems it fit for trial, and he commits or holds the accused to bail. This is all public; but before trial, twenty-three gentlemen, uninformed in legal matters, sit in a private room, and in private have each witness separately, to inform them what he knows of the transaction, and by such means to grope their way through an intricate labyrinth of facts to satisfy them, not that the accused party is guilty, but that the magistrate, who heard everything and everybody, was right in sending him for trial by a jury of his country. Whether the same or a different story from that upon which the magistrate committed is told before the Grand Jury is unknown to them; frequently fresh witnesses are sent to them; as frequently some of those, previously examined by the magistrate, are suppressed; yet the Grand Jury is to make a return "true Bill" or "no true Bill," without giving a reason, for they are prohibited by oath from disclosing any

and everything which may have passed before them. All they know is, that they have heard *ex parte* statements from persons whom they do not know—the truth of whose statements they have no means of testing, and without having the accused party before them; and upon those premises they are to decide. The wonder ought to be, not that so many, but that so few bills are ignored.

These incongruities have been long felt and acknowledged with reference to "ignored Bills," but they have scarcely ever been considered with respect to Bills improperly found. However, it is but justice to admit that an attempt (though an ineffectual one,) has been made to remedy, in some measure, the evil.

Strange that neither judges, nor legislators, nor legal officers of any kind, should have taken up the matter, but that it should have been left to be considered by a body, whose functions are in no respect of a legal or judicial character.

The evil, however, was so crying, that the Corporation of London finding so many Bills ignored (*a*) every Session, referred the matter to a committee to investigate. The committee obtained considerable information, and in the year 1838 reported in favour of the appointment of a clerk to the Grand Jury; and they referred, in the course of their Report (*b*), to statements received by them from

---

(*a*) From twenty to thirty Bills are ignored every Session, upon charges which have been investigated by magistrates who have taken the depositions of witnesses, and committed the accused for trial.

(*b*) REPORT.—*To the Right Honourable the Lord Mayor, Aldermen, and Commons of the City of London, in Common Council assembled.*

We, whose names are hereunto subscribed, your committee in relation to the administration of justice, to whom on the 9th day of March, 1837, it was referred to inquire whether it would be desirable for this Honourable Court to recommend the commissioners at the

that experienced and intelligent gentleman, Mr. John Clark, the clerk of the Central Criminal Court, as condemnatory of the then present system.

Central Criminal Court to appoint a clerk to attend the Grand Jury with or without depositions, as at the Queen's Bench Court, with a view to insure the dispatch of business, to promote the ends of justice, and to effect a considerable saving of time and expense to prosecutors and witnesses, to report our opinion thereon; Do certify that we have proceeded in the consideration of the said reference, and have been attended by John Clark, Esquire, the clerk of the peace, whom we heard and examined, and who stated to us, that he was of opinion a clerk should be appointed to attend the Grand Jury; that he apprehended the principal objection to the depositions being seen by the Grand Jury would be, that they might sometimes decide upon the evidence of the depositions, instead of upon the evidence given to them by the witnesses. That he was also of opinion, if Grand Juries were abolished, much time and expense would be saved; that Bills brought before Grand Juries had often been ignored, because the evidence given before the magistrates had been withheld from them; that he further thought if Grand Juries were abolished, the magistrates would be more particular in their commitments, and a saving of a third, at least, of the present expenses effected; and that Bills had often been preferred before the Grand Jury for improper and illegal purposes.

That during the progress of the consideration of the said reference, and, in addition to the statement of Mr. Clark, Mr. William Corne Humphreys, a member of your committee, reported to us, that several cases had come to his knowledge recently, in which considerable evils had resulted to the public from Bills having been preferred before and found by Grand Juries without such cases having been previously brought before a magistrate.

And we your committee having taken the respective statements into consideration, are fully satisfied that great injustice is often committed, by reason of the suppression of testimony by the witnesses who have been examined by the magistrate, and by the absence of such witnesses.

And we are further of opinion, that great injustice often arises by individuals preferring Bills before Grand Juries without the case having been previously brought before a magistrate.

We are also of opinion, that in addition to the loss of time and expense to the parties, that a considerable expense is likewise thrown

The effect of this Report was a communication to the commissioners of the Central Criminal Court, who appointed a clerk to attend the Grand Jury, with the depositions previously taken and transmitted to the Court by the committing magistrates against the several persons committed for trial; but the appointment has, in no respect, diminished the existing evils, though it has, perhaps, occasionally lessened the labours of some of the Grand Juries. The clerk is an irresponsible officer, and not sworn; indeed, he cannot be, for there is no prescribed form of oath for him, nor can his duties be defined; and as a proof of the irresponsibility of, as well as want of authority in such an officer, some of the Grand Juries, since the appointment, have permitted his presence, while other Grand Juries have refused it; and it would seem, that those who refused, acted, at least, with caution, and within the spirit of their oath, "to keep secret the Queen's counsel, their fellows, and their own," which oath is considered by some to be broken every time the clerk sits with them. Thus, at each Session, the clerk assists or not, according to the pleasure of the Grand Jury made known to him after they are sworn

---

upon the City and the counties, in consequence of the attendance of prosecutors and witnesses before the Grand Juries; and we are, therefore, of opinion, with a view to improve the present system, that it should be recommended to the commissioners of the Central Criminal Court to appoint a clerk to attend the Grand Jury with the depositions.

We beg further to certify, that although we entertain a strong opinion as to the inutility of Grand Juries within the jurisdiction of the Central Criminal Court, yet, as that subject has not been expressly referred to us by this Honourable Court, we have felt it expedient to refrain from reporting thereon in the present instance; but we beg to suggest, as this is a matter of a grave and important character, that it will be extremely desirable for this Honourable Court to consider that subject more at large.—*Printed Minutes of Common Council*, 1838, p. 234.

by the Court. Surely, the administration of justice should not, in regard to its officers, be left to chance and to caprice. It is altogether calculated to bring it into contempt.

If the business of clerk to the Grand Jury be to examine the witnesses from the depositions, and sum up the evidence, and make the points for the Grand Jury, then he acts the part of a judge, and the Grand Jury performs the part which is peculiarly the province of the petit jury. If such be not the clerk's business, he can have no other, and is, consequently, an useless officer (*a*).

The furnishing of depositions to the Grand Jury produced another evil, which did not theretofore exist; it entailed upon prosecutors trouble and expense, which before was unknown. For instance, if there were no sworn depositions returned to guide the Grand Jury, and a Bill for misdemeanor was preferred, a statement of facts upon paper was deemed proper to be annexed to the indictment, to enable the Grand Jury to examine the witnesses. Thus, written unsworn statements were frequently sent in to the Grand Jury by the prosecutor or his attorney; and from these unsworn statements the minds of the Grand Jury were first enlightened, and then they examined as many or as few of the witnesses as they might think fit. The prosecutor—perhaps an ignorant man, yet unwilling or unable to employ an attorney—made his written statement, which, though honest, was perhaps unintelligible, and instead of elucidating, mystified the facts, and his witnesses not confirming his statement, his Bill was ignored; but if he were a clever man, his statement would be written with point, and in a clear manner, so that his own evidence, with very little or no support, was sufficient, with such a paper, to induce a finding. He might be honest,

(*a*) The Legislature seems to have considered the office of clerk to the Grand Jury a useless or improper one, as that office, in the Court of Queen's Bench, has been abolished by statute. 6 Vict., c. 20, s. 1.

he might be otherwise; the written statement might be fair and true, but it might be the clever concoction of a cunning writer, and that sifting which would alone unravel the truth was thereby avoided. The Grand Jury were thereby saved trouble; the honest man, who was ignorant, would have his Bill ignored, while the dishonest man, who was clever, would have his Bill found. This practice is not so much in use now as formerly; but as a substitute, the solicitor for the prosecution frequently attends to examine witnesses, although the Grand Jury professes to be a secret tribunal.

The evils of charges being made from impure motives, and which are favoured by the secret inquest, without preliminary magisterial inquiry, have not been seen only by the Corporation of London, or by individuals; but the Legislature itself, it seems, has, in some manner, considered it, for the 13th clause of the Central Criminal Court Act (4 & 5 Wm. 4, c. 36), prohibits (*a*) the finding of indictments at the Central Criminal Court for misdemeanor (other than for perjury, or subornation of perjury), unless the parties prosecuting or prosecuted be under recognizances, or the offender be in custody. No doubt such is (while Grand Juries exist) a wholesome enactment and well intended. It was doubtlessly supposed by the Legislature, that by such an enactment previous investigation by a magistrate would be insured. It is not so; the object of the statute is evaded in one of two ways. The prohibition extended to the Central Criminal Court only; therefore, at any of the Sessions of the peace, though within the venue of the Central Criminal Court, an indictment may be found as before; and it is every day's practice so to proceed, and afterwards remove indictments so found to the Central Criminal Court, and without recognizance; but an

(*a*) This prohibition repealed since First Edit., by 9 & 10 Vict. cap. 24, s. 2.

indictment may also be, and frequently is found, at the Central Criminal Court itself, merely upon recognizance being secretly entered into before a justice without any investigation of facts. The recognizance is voluntary, and the justice does not inquire whether the charge which he binds the party over to prosecute is well or ill founded; it is enough that an individual says, "I want to prosecute A. B. for a fraud, or conspiracy, etc.; bind me in recognizance to do so." The request is complied with, and no information or deposition is taken. Thus the object of the Legislature in making a previous recognizance necessary is defeated by originating the proceedings at the county sessions, or by giving a secret recognizance without investigation of facts.

SECONDLY.—To show that no benefit to the public is derived from Grand Juries.

My purpose is not to discuss whether in times gone by Grand Juries were or were not useful in a public point of view, as a means whereby to bring offenders to justice, or to protect the innocent and lowly from the power and oppression of the Crown; but it is to show that Grand Juries are not now in such, or in any respects, useful or necessary; that they do not, and cannot now act, as safeguards to any body, but that they are rather pieces of machinery, which, in these enlightened times, encumber and clog the chariot wheels of justice; and, consequently, no benefit is derived from their continuance by Crown or subject, or by accuser or accused. In order to illustrate this part of my subject, I must consider and point out the usual preliminary and subsequent proceedings in a prosecution, taking the Grand Jury (which it generally is), as the intermediate tribunal.

First, accusation is made—apprehension follows—investigation before a magistrate succeeds. The prosecutor and the accused are brought face to face. The prosecutor

is examined, and deposes in public; his witnesses, to prove the accusation, are likewise examined, and depose in public. The accused may personally, or by his advocate, question the witnesses, and if he please, deny or answer the charge, or explain his conduct; or he may reserve himself, at his option, for the period at which he shall be tried by a jury of his country. The accused not only hears the evidence, but by right may have, and now in practice usually has, a copy of the sworn depositions against him. That same evidence is also furnished to the prosecutor, and it is also transmitted to the Court whereat the trial is ultimately to proceed. Is the investigation fairly conducted?—has the magistrate shown partiality or incapacity? If either, it must have been openly done in the face of the accused, his advocates, and the public press; and either or all may, if there be reason for it, complain of or expose any wrong sustained. Is the evidence sufficient to warrant the submission of the facts for the consideration of a jury? If not, the accused or his advocate, by the investigation being open, has the means of objecting and giving reasons why the accusation is insufficient either in law or fact. Thus full opportunity is given, which is accepted or declined, and all parties being heard, the magistrate decides not on the guilt or innocence of the accused, but merely on the sufficiency of facts to warrant his solemn trial, by the best of all human tribunals, a judge and jury of his country. What further preliminary or intermediate investigation can be necessary for public good or convenience, or for the safety of the accused? Does a Grand Jury, sitting in secret, and consisting of persons unused to the sifting of evidence, and unlearned in the law, possess the instinctive power of elucidating more thoroughly, by examining at one hurried sitting, in the absence of the accused, each witness separately, an intricate and difficult story, than an intelligent, experienced,

and legally informed magistrate, who may have been engaged days, and perhaps weeks, in forming a chain of facts into a fit state for trial? If not, then the public are not benefited, and a prosecutor and witnesses ought not to be subjected to a secret examination and scrutiny, such as that imposed by the Grand Jury. All that is necessary in the way of preliminary inquiry has already been done by a magistrate in public, and in the presence of the accused. Why a second preliminary inquiry in secret, and in the absence of the accused? If witnesses or facts are added before the Grand Jury, the accused knows not of them, and is prejudiced. If facts are suppressed by suborned or absent witnesses, the Grand Jury is in ignorance, and justice is defeated. No advantage, therefore, appears derivable to any party, though much evil may be done by this intermediate tribunal. The first, or magisterial inquiry, has already taken place. The magistrate has decided upon a trial being necessary; no reason has been urged to controvert that decision, and, instead of advantage, much loss of time, trouble, and expense to the parties and the country, are incurred by a Grand Jury investigation.

The accused party, where he has already been committed, may perhaps be said to have an additional chance for escape by the Grand Jury investigation. Such a supposition is a fallacy, for the non-finding of a Bill is no acquittal, and notwithstanding such a return, a fresh Bill or Bills may be preferred Session after Session, *ad infinitum*, for the same cause. The law, however, does not intend, nor ought it to intend, that a real offender shall escape. If a jury upon open trial, say, "Not guilty," the law is satisfied; but neither the law nor the constitution intends, that from ignorance of facts, subornation of witnesses, or any undue means, all of which, without check, may be practised on the Grand Jury, a real offender shall evade

the law, and escape a trial by his peers; yet the Grand Jury system encourages these evils, and it frequently happens that Bills are ignored without any assigned reason, and to the astonishment of committing magistrates, harassed prosecutors, and an observant public.

THIRDLY.—To point out a substitute for Grand Juries.

I have already said, that it is not to "Trial by Jury," but to the secret inquisition of a "Grand Jury," I object.

The question will arise, and probably be put by the reader, who shall deem the subject of these pages worthy consideration,—How, then, if there be no Grand Jury, can a man be put on his trial? There will be no Bill of indictment. The business of the committing magistrate ends, when he signs his commitment for the transmission of the accused to the county gaol. The depositions, it is true, are returned to the Court, but there is no record, and it is now the business of the Grand Jury to present that document in a formal manner to the Court.

To this question, I answer, that the remedy is simple, and it is satisfactory to know that no new experiment need be resorted to, and that the present laws provide forms.

At present, the mode of proceeding is, for the accusing party, either through the intervention of his attorney and counsel, to frame his indictment, and take it to the clerk of indictments of the Court, where the trial is to take place, or, without professional aid, to furnish that functionary with such facts as will enable him to prepare the indictment, and which, in either case, when complete, is passed from the clerk of the indictments to the Grand Jury, whose business it is to examine the witnesses, and through their foreman to write on the back of the Bill of indictment, that it is "a true Bill" or not, as the evidence before them may warrant, and so return it "found" or "not found," into Court. The

indictment begins with these words, "The jury for our Lady the Queen, upon their oath present" that A. B., etc., stating the parish, time, and offence, and concluding against the form of the statute, etc., or against the peace, etc., or both, as the facts and law may warrant.

Suppose, instead of the *record* commencing with the words, "The Jurors for our Lady the Queen," etc., it were to commence with some such words as the following: "J. C., the clerk of the Central Criminal Court, duly appointed by the Commissioners named in the Commission of Oyer and Terminer, sitting at the Central Criminal Court, at the Session, holden on the first day of January, 1842, gives the said Court here to understand, and be informed, that A. B.," etc.

By the adoption of these, or some such formal words, in lieu of "The Jurors for our Lady the Queen, upon their oath present," the instrument which is now called an indictment would become and be more properly called an information. In all its substantial parts of venue—names of parties—description of offence—time of its commission, etc.—it would be the same as the present indictment. It would be prepared by the counsel of the prosecutor, and brought, so prepared, to the officer of the Court, or it would be prepared at once by the officer of the Court, as the indictment now is; and that officer, in either case, would present it to the Court as the document of accusation.

That officer is now responsible to the Court for the correctness in form of the indictments presented by the Grand Jury to the Court. If there be anything wrong in those records, the officer, and not the Grand Jury, has to explain. He would alike be the responsible person for the information; and the only difference, therefore, would be, that instead of the clerk of the Court sending the record first to the Grand Jury, for them to indorse it, and bring it into Court as their

presentment, as is now done, that officer would bring it himself into Court, and it would be his presentment.

The prisoner is now arraigned, as it is called; that is, the indictment is read to him, and he is required to plead to it, by saying "guilty," or "not guilty;" and it instantly becomes an issue for trial. The same proceeding could take place upon the information, and the same forms, in all respects, could be observed in Court as upon the indictment.

For this suggestion I have no merit; it is no new or ingenious device. It very nearly resembles the practice of the Court of Queen's Bench in cases of misdemeanour, where the proceeding is by criminal information; and, in substance, the mode of arriving at it, when at the instance of an individual, is the same. Thus, in the Court of Queen's Bench, statements in the nature of depositions, though called affidavits, are sworn, and the judges decide upon the sufficiency of those affidavits to warrant the filing of an information.

In the proposed arrangements, the depositions taken before and returned by the magistrates, would be the authority for the clerk of the Session or Assize Court to file or present the information; and this duty he would perform, and the proceedings would be, in all respects, the same as they now are, except that an information would be substituted for an indictment, and would be presented to the Court by the officer of the Court, upon the authority of the sworn depositions, instead of by the Grand Jury upon the parol but secret testimony of witnesses.

FOURTHLY.—To prove the extent of benefit which the public would derive by the change.

Having shown the evil of the present system, and not only the uselessness, but the injury which a Grand Jury causes, my business now is to point out the benefit which would

result from the abolition of this tribunal. At the Central Criminal Court, the clerk of indictments has the depositions returned by the committing magistrate, from which, and any further instructions he may obtain from the prosecutor, he prepares the indictment. The next step is for the prosecutor and his witnesses to attend on the day for which they are bound in recognizance. The clerk of indictments examines the indictment, and questions the prosecutor as to the material facts, such as date, articles stolen, or injury done, parish, name, etc., and then ascertains if the witnesses bound over are in attendance. When these preliminaries are gone through, an officer of the Court takes all the witnesses, together with the indictment, to the Grand Jury; and the witnesses have to wait until the case is called in its turn; and then to swear again to the facts in private, which before they have sworn to in public. This machinery, in some few instances, is got through in one day—in very many instances, three or four days; and it may be fairly said, that each case, on the average, occupies at least two days before the Bill is returned; after which, if found, one, two, or three more days intervene before trial.

Everybody complains of this; but where there are between one and two hundred, or perhaps more indictments to be considered, none probably with less than three, and some extending to twenty or thirty, or more witnesses, who are to be examined, the surprise is, that instead of two days, people are not kept four.

Personal inconvenience, standing about in cold lobbies, without refreshment, in a dark and heavy atmosphere, or out in the street, exposed to wet and cold (for one or other of these annoyances must be endured by man, woman, and child attending the Grand Jury,) is what every witness is subject to, for one, two, three, or more days, as the case may be.

Loss of time to individuals, whose occupations are their means of living, and for which they get no compensation (the trifle paid them being bare subsistence money,) is a serious evil, and calculated to induce, and frequently does induce persons to avoid prosecutions, rather than submit to such an infliction.

The expense to the country to keep up this useless intermediate machinery, is enormous; and, be it remembered, that although the allowance to each person as a witness is only from one shilling and sixpence to three shillings and sixpence per day, when those sums come to be paid to hundreds of persons every Session throughout the year, they make a large amount in the aggregate.

The Court, if Grand Juries were abolished, would not have to wait, or frequently adjourn, as is now the case, for the Bills being returned by the Grand Jury, but the magistrates, at the time of the committal, would return to the clerk of the Court the depositions. That officer would then be prepared, and proceed with the cases, according to the order in which the committals would take place. A list of trials for the first day might be posted one or two days before each Session, and renewed each succeeding day as the list progressively diminished, by which means the Court, the public, and all persons interested, would have knowledge of the day, and the order in which each and every case would stand in the paper.

The gentlemen of the county, whose duty it is to act as Grand Jurors, would be relieved of a very arduous, troublesome, and useless labour, which always occupies them at the Central Criminal Court at least four days in each Session, and in some Sessions the period is extended to six, and it has been known to last seven days. The witnesses, instead of being occupied from three to six or eight days, would be engaged one or two, at most; the expenses would

be reduced from 25 to 50 per cent. The machinery of the proceedings would be lessened and simplified; the useless occupation of Grand Jury room and waiting rooms would cease; the number of officers of the Court would be lessened; no new ones would be required; the chance of tampering with witnesses would be cut off; trials would take place which now are illegally prevented; and no accusation would be made, except for the public good, and in the full face of the public.

CONCLUSION.

Although I am but a very humble individual in society, the experience which I have had in my profession has caused me necessarily to observe, I believe correctly, the subject upon which I have ventured to use my pen.

My object is, not to make a violent stride, or to take a step which cannot be retraced. The Central Criminal Court is a peculiar jurisdiction of itself—it interferes in its Grand Jury with no county Quarter Session; each of those (though, in some instances, they cannot, within the jurisdiction of the Central Criminal Court, try), can find Bills for most offences, and transmit them to the Central Criminal Court. Let, therefore, the experiment by a short enactment be first tried at the Central Criminal Court, and let such an enactment be at first, not to the exclusion of, but *concurrent with, the mode of proceeding by indictment, as at present existing.* If the experiment succeed, the advantage can be extended, and then the Grand Jury abolished. If it fail, which is impossible, the ancient mode can be continued. Strong as is my impression as to the practicability and utility of the change I propose, I ask it not to be effected

hastily. If the Legislature will condescend to consider it, will examine the evidence given by witnesses who comprehend it (*a*), and will discuss the matter fully, I feel no doubt that every argument will be against, and no solid reason urged for the continuance of Grand Juries.

(*a*) *See* Appendix B.

APPENDIX A.

ARTICLES, REPORTS, PRESENTMENTS, &c.

EXTRACTED FROM THE PRESS.

The TIMES, 10*th May*, 1844, *as to a Presentment by the Grand Jury at the Central Criminal Court.*

PRESENTMENT.

" Previous to the conclusion of the labours of the Grand Jury, they made the following presentment to the Court:

" 'The Grand Jury desire to express their belief, that no disadvantage would arise to the administration of justice, nor to persons committed for trial by the police magistrates, if the indictments against such persons were brought to trial before the Court without the intervention of the Grand Jury, and that this alteration of the existing practice would effect a great saving of expense to the districts within the jurisdiction of the Central Criminal Court, and of the time of the police and witnesses generally, and would also further the ends of justice, by diminishing the disinclination of prosecutors to make the sacrifice of time and convenience which is now required of them.'

" The Common Serjeant returned the following reply:

" 'As your observations are confined to this district, where the committing magistrates hold regular police courts, where the bar attend, and where the press regularly report the proceedings of the Courts, I agree with you, and think a great loss of time, unnecessary inconvenience, and expense, and sometimes injustice, is occasioned by the attendance here of the Grand Jury, and I will therefore direct that your representations be communicated to the Secretary of State at the Home-office.' "

From the DISPATCH *of the 31st August*, 1845.

In a very long article exposing the hardship which a gentleman had endured by a bill of indictment having been preferred, without any preliminary investigation by a magistrate, in consequence of which he had been apprehended on Saturday night and brought into the Central Criminal Court on Monday morning, to be bailed, and was instantly set at liberty, the *Dispatch* report has, amongst other strong remarks, the following:

"It was urged by the Common Serjeant, that the institution of a Grand Jury in London was perfectly unnecessary, especially as there are numerous police offices at which a case of this kind might have been heard, and both sides of the question canvassed, instead of going before a Grand Jury, on the eve of being dismissed, to have the case disposed of by a process to which a railway pace can bear no comparison."

The report then further comments, and has the following important lines:

"We make these observations with the view of showing that, under the present Grand Jury system, any man, however innocent he may be, may be dragged from his family and friends without notice, and incarcerated like a felon, until it pleases the judge to release him; any respectable housekeeper, at the caprice of a vagabond attorney, or other roguish fellow, may be handcuffed and taken to jail."

From the DISPATCH *of 31st August*, 1845.

"UNSUPPORTED CHARGES.—Mrs. [the name was given in the report] a lady of highly respectable character and connections, appeared in Court upon an indictment charging her with keeping a common bawdy-house, in the parish of St. George's Hanover-square, on the 1st of August last. The defendant pleaded not guilty. The witnesses for the prosecution were then called, but none answering, a verdict to that effect was recorded. Mr. Clarkson said he was retained on behalf of this respectable lady, who was thus disgracefully exposed to a public prosecution, under circumstances of peculiar aggravation on the part of the individual who was the moving agent in this infamous proceeding. The lady now in court was the occupier of a house in Bolton-row. This house, as the proprietor, who was present in Court, could

testify, had never been occupied but by parties moving in the highest circles of society. The learned counsel then strongly animadverted upon the conduct of the party who had laid these informations, who, he stated, had been sentenced to transportation for felony, at these sessions, in 1836. The learned judge joined in the learned counsel's expression of indignation at the prosecutor's baseness. There was a certain class who made a trade of extorting money by these fictitious prosecutions, and if the accused parties came forward to trial no one appeared. The parties then left the Court, expressing their determination to use every effort to find and punish, if possible, the active agent in this prosecution."

From the TIMES.

"Middlesex Sessions, Thursday, Sept. 25, 1845. (Before Mr. Serjeant Adams, the Assistant Judge, and a full Bench of Magistrates.)

"THE GRAND JURY.

"Yesterday, upon the Grand Jury concluding their labours for the present session, they intimated to the Court that it was their opinion that their services were not at all required in any of the cases which were sent there for trial. They therefore begged to make a presentment to that effect.

"It will be in the recollection of our readers that a similar presentment was made by the Grand Jury of the preceding session."

From the TIMES.

The following is that portion of a presentment, and the answer of the judge, which exclusively relates to the Grand Jury; the remainder is not incorporated, as it had reference to other matter:

"Middlesex Sessions, Wednesday, June 3, 1846. (Before Mr. Serjeant Adams, Assistant Judge, and a full Bench of Magistrates.)

"During the day the Grand Jury, having brought their labours to a termination, entered the Court with the following presentment:

" 'The Grand Jury for the county of Middlesex, assembled at Clerkenwell, the 3rd day of June, 1846, having endeavoured to fulfil, to the best of their abilities, the purpose for which they have been summoned, feel it a duty they owe, not only to themselves but to the Court, to offer a respectful representation *of their utter uselessness. Not only have they felt their services to be useless, but in some instances they have been a positive impediment to the administration of justice.* Summoned from their various avocations for what they have been led to consider a great public duty, and invested, as they have always considered, with a serious responsibility; quite willing, however, to take upon themselves such responsibility, and to devote their time to the public service, they have found themselves utterly helpless for any purposes of good. Unacquainted with facts which have already been sifted, and are exhibited on the depositions before the Court, and unable from their very constitution to arrive at any knowledge of facts by cross-examination or otherwise; confined to the evidence of only such witnesses as are endorsed on the indictment, and unable to seek other information, although in some cases it has been shown to be at hand, they have felt the performance of their duties to be little better than a waste of time and an idle mockery. Though perfectly aware that this Court has no power to afford them any relief, they take this method to place their sentiments on record, as it is only by similar reiterated representations that any amelioration can be expected from the Legislature; and they are the more induced to this step from a consideration of the nature of the vast majority of cases which occupy the time of this Court—cases of so frivolous a character, that the intervention of a Grand Jury seems to have no possible object but the detention of witnesses and the lengthening of the proceedings of the Court, and can, so far as they can see, tend to no possible good.

" 'N. E. BOWLER, Foreman.'

" The learned judge observed, that the matters put forth in this presentment of the gentlemen of the Grand Jury were of the greatest importance, and he would therefore take care that the document should be forwarded to the proper quarter."

From the TIMES.

"Central Criminal Court, Aug. 24, 1847. Old Court. (Before the Recorder.)

"William Humphreys and John Pheasant surrendered to take their trial upon an indictment for misdemeanour in having unlawfully preferred bills of indictment against a number of persons, for the purpose of extorting money from them.

"Mr. Payne conducted the case for the prosecution.

"It appeared from the evidence of numerous witnesses, that on the 23rd of April the prisoners attended at the Crown-office of the Court of Queen's Bench, and by the intervention of the Grand Jury sitting at that place they obtained a true bill against six persons for keeping a brothel. Humphreys represented himself as the clerk to an attorney conducting the prosecution, and paid all the fees in that capacity; and Pheasant, who described himself as a labourer, living in Bow-common, was the witness tendered before the Grand Jury, and upon whose evidence the bill was obtained. The plan adopted was to charge one person who really was connected with a house of the description alluded to, and include a number of others who had nothing whatever to do with it, and the moment the bill was obtained, Humphreys applied to them, and informed them of the fact, and demanded money to stop further proceedings. A second indictment was preferred by the same parties in June against six other persons, when a true bill was also obtained, but no steps were taken to prosecute the indictments with effect, and, upon inquiries being made for the witness, whose residence was described as being at Bow-common, no such person could be discovered; and it subsequently turned out that he was living in a court in Drury-lane; and with regard to this prisoner, it appeared pretty clear that he had committed deliberate perjury before the Grand Jury, as it was shown that he was an entire stranger to all the parties whom he had accused, and that he knew nothing of their circumstances. It was proved in the course of the case that Humphreys had demanded 10*l.* from one of the persons indicted, and 5*l.* from two of the others, and it was likewise shown that he had been in the regular receipt of a sum of 1*l.* per month from a brothel-keeper to protect her, as the witness said, 'from the intervention of any common informer;' and it appeared that upon the payment of this amount

being stopped in May last, he immediately included her in a subsequent indictment which he preferred before the Grand Jury,

"Humphreys in his defence declared that he had acted *bonâ fide* in preferring the indictments, and that his only object was to carry out the ends of justice. The other prisoner made no answer to the charge.

"The Recorder summed up the evidence, and the jury immediately found both prisoners *Guilty*.

"His Lordship, on passing sentence, said that the prisoners had been severally convicted of a most atrocious conspiracy, in preferring bills of indictment, not for the purposes of justice, but to extort money by holding indictments over the heads of the parties, and it also appeared equally clear that gross perjury must have been committed before the Grand Jury to induce them to find the bills. It was absurd to suppose that Humphreys was actuated by a desire to obtain justice, and it appeared to him that it was one of the most formidable conspiracies that could be carried into effect, and that it was one which called for a severe punishment at the hands of the Court. He then sentenced Humphreys to be imprisoned for eighteen months in the Westminster Bridewell, to pay a fine of 50*l.*, to enter into his own recognizances in 200*l.* to keep the peace for five years, and be further imprisoned until such fine was paid and recognizance entered into. The other prisoner was sentenced to a year's imprisonment, and to enter into his own recognizance in 40*l.* to be of good behaviour for three years."

From the TIMES.

"Bail Court, Thursday, Nov. 11, 1847.

"Mr. Justice Patteson sat at half-past 9 this morning, and the two Grand Juries for the county of Middlesex were sworn, and his Lordship delivered to them his charge, observing that it was not in his power to give them any information as to the cases which would be brought before them, because he really had no means of knowing what those cases would be, nor indeed was he aware that they would be troubled with any cases. They might think it strange that forty-six gentlemen should be brought together to hear nothing; but still it was a tribunal before which

any of Her Majesty's subjects had a right to prefer any charge they might think proper. No doubt, it was something like breaking a fly upon the wheel; but still, such was the law, and they must conform to it."

From the TIMES, 21*st January*, 1848.

The following report appeared as to conversations between the Chairman of the Middlesex Sessions and the Grand Jury on the previous day:

"THE GRAND JURY.

"The learned chairman, in the course of his address to the Grand Jury, told them that, after much consideration, he had come to the conclusion that the services of a Grand Jury, so far as that Court was concerned, might, without the least danger to the liberty of the subject, be altogether dispensed with.

"The foreman, last night, when the Grand Jury were about to be discharged, said, that he had been requested by his brother members of that body to state, that, in consequence of the observations upon the subject which had fallen from the learned chairman, they had talked over and well considered the matter, and they begged to inform the Court that the conclusion they had arrived at most fully concurred with the opinion of the learned gentleman."

From the TIMES, 2*nd February*, 1848.

"Central Criminal Court. (Before the Common Serjeant.)

"In a very long report of a trial of two persons, named Mansell and another, for conspiracy, and who at its termination were acquitted, the following is stated as to the Grand Jury:

"The Common Serjeant, who had at an early stage of the case expressed an opinion that the charge of conspiracy could not be established, here observed that there would be an end of indictments such as these when the Grand Jury was abolished.

"The evidence having concluded, the jury immediately returned a verdict of *Not Guilty*.

"The Common Serjeant refused to allow the expenses of the prosecution."

From the TIMES, 1*st March*, 1848.

The following case is reported at great length, and useless for this work, except some extracts from it, which show the use made of the Grand Jury by those instituting the prosecution, and which extracts are as follow:

"Central Criminal Court, Feb. 29. Old Court. (Before the Recorder.)

"Joseph Wadsworth surrendered to answer a charge of feloniously forging and uttering a bill of exchange for 300*l.* with intent to defraud.

"Mr. Parry prosecuted; the prisoner was defended by Mr. Serjeant Wilkins and Mr. Robinson.

"In this case there had been *no inquiry before a magistrate;* but the prosecutor obtained a bill upon evidence tendered before the Grand Jury two sessions ago, and the defendant was admitted to bail by the Court.

"The circumstances under which the charge was preferred were of rather an extraordinary character.

"The principal witness, on cross-examination, said that *an attorney, named Davis,* was engaged as the attorney to conduct the prosecution, but he had never had any communication with him, and only saw a person, named *Burnell, who acted as his clerk,* but he declined to state whether he was aware that this man *was a returned transport.* He also said, that *although he was aware of the forgery having been committed, he took no steps to go before a magistrate, but, by the advice of Burnell, he went with him before the Grand Jury and preferred the present charge.*

"William Barrett, the prosecutor, said, when cross-examined, *Mr. Davis was the attorney for the prosecution, but he never saw him until he was pointed out a day or two back in the Court.* He had instructed Burnell, who acted as his clerk, and he supposed he was a respectable man, and was not aware that he had been transported.

"Upon Serjeant Wilkins stating that Burnell's name was upon the back of the bill as a witness, and he wished to put a few questions to him, the Recorder directed that he should be placed in the box.

"Richard West Burnell, the person referred to, was accordingly

examined by Serjeant Wilkins. He said that he was clerk to Mr. William Blisset Davis, a solicitor. *Mr. Davis lived over the water, but he did not know the name of the street or the number of the house, but he did know that it was at Camberwell. Mr. Davis's office was in London-street, Fitzroy-square, and he (Burnell) lived in the house, but Mr. Davis paid the rent of the office. The name Burnell was on a brass plate on the office door-post, and Mr. Davis's name was not there at all.* His 'certificate' was at the office, but he sometimes did not come to the office himself more than once or twice in a fortnight. *Witness was transported for seven years for practising as an attorney* without being upon the rolls, and this was twenty years ago. He was paid 30s. a week as the clerk of Mr. Davis.

"Verdict of *Not Guilty* was recorded."

Extracted from the Notes of the Shorthand Writer of the Central Criminal Court, Wednesday, 17th May, 1848.

(Before Mr. Baron Alderson and Mr. Justice Coltman. The Queen against Francis McGowan and others, indicted for the forgery of a Will.)

On the case being called on, it was postponed till a later period of the day, then again called on; and the parties still not appearing, the prisoners were acquitted.

Mr. Clarkson (after alluding to the facts of the case, which are immaterial to state here) said:—"This is a case in which the parties have never been before a magistrate; they have taken no step to produce the Will alleged to be forged; we have brought it here from Doctors' Commons.

"Baron Alderson.—What surprises me is, how the Grand Jury could find the bill.

"Mr. Bodkin.—It is most astonishing.

"Mr. Clarkson.—I have been very much tempted to say something on the subject of Grand Juries generally.

"Baron Alderson.—Certainly it is most extraordinary. I do not see how, without having the thing said to be forged before them, the Grand Jury could find the bill.

"Mr. Clarkson.—It is one of the many opportunities that must present themselves to the minds of the learned Judges of

seeing to what an extent of mischief and injury this establishment may lead, and of what little real use it is."

From the TIMES *of* 19*th May*, 1848.

PRESENTMENT.

"The Grand Jury came into court, and made the following presentment:

"The presentment was read by Mr. Straight. It was as follows:

" 'Resolved,—That the Grand Jury for the Central Criminal Court ought, in the opinion of this Grand Jury, to be abolished within the limits of the stipendiary magistrates. That in London and the suburbs, and within the jurisdiction of this Court, the accused parties are committed for trial by an intelligent body of stipendiary magistrates, responsible to the powers by whom they are appointed. That such magistrates can have no local or personal interest whatever to bias their judgment, and whose proceedings are conducted in open Courts, and reported duly by the press. The further inquiry, therefore, by the Grand Jury is particularly unnecessary within the jurisdiction of this Court, and it also appears to us that it frustrates the ends of justice, and is often the means of extortion and of innocent parties being unjustly accused.

" 'That it thus affords an opportunity for corruption, and for tampering with prosecutors and witnesses to induce them to alter or suppress their evidence given before the police magistrates, and thus is a means of wealthy offenders escaping from justice, and entails great delay and loss of time upon the parties prosecuting. To the humbler classes this delay and consequent idleness is demoralizing, and the middle and richer classes will frequently allow an offender to pass unpunished rather than prosecute an offender at the Central Criminal Court.

" 'The parties are frequently compelled to attend before the magistrates two or three times before the depositions are completed and the case ready to be sent for trial. They then have to attend again before the Grand Jury, and perhaps are kept waiting on an average two days, after which they have again to meet frequently for several days until the cause is tried. In

cases where the bill is ignored by the Grand Jury, if it be in consequence of insufficient evidence, in addition to the loss of time to parties so attending to prosecute, a great injustice is done to them and to the public if the guilty party be suffered to escape because the evidence may have been altered or suppressed."

From the TIMES, 10*th Feb.*, 1852.

"Court of Queen's Bench, Westminster, Feb. 9th. (Sittings at Nisi Prius, before Lord Campbell and a Special Jury.)

"THE QUEEN *v.* MELLERSH.

"Mr. Edwin James, Mr. Serjeant C. Jones, and Mr. Robinson, were counsel for the prosecution; and Sir F. Thesiger, Mr. Clarkson, and Mr. Huddlestone for the defendant.

"This was an indictment against a gentleman of the name of Mellersh, an attorney and banker at Godalming, for perjury. The indictment was preferred by a Mr. Holland, a brewer of Godalming, and it arose from bills and answers in Chancery."

The evidence, as detailed, was given at great length, and for this Appendix, unimportant, except as regards the Grand Jury. The following extracts from the report are pertinent in that respect. The prosecutor said, on being cross-examined:

"I have been before the Grand Jury many times. There are three indictments against the defendant for perjury, arising out of the answers in chancery, and there is one against Whitburn (the bankers' clerk), one against Frederick Mellersh, and there is an indictment for conspiracy against the defendant, Frederick Mellersh, Whitburn, and Johnson. I went before the Grand Jury at the Central Criminal Court on three indictments for perjury, which were thrown out. I preferred an indictment for conspiracy before the Grand Jury for Middlesex, which was thrown out."

Upon the close of the case for the prosecution:

"Sir F. Thesiger then addressed the jury for the defendant, and, in the outset, complained most warmly of the state of the law which permitted indictments to be preferred before Grand Juries behind the backs of defendants. The learned counsel then animadverted upon the facts of the case, declaring that he felt no anxiety as to the result of the case. It is impossible,

however, to follow the circumstances alluded to by the learned gentleman relating to bills and answers in chancery, which occupied, we should think, nearly fifty skins of parchment."

After the reply of the counsel for the prosecution:

"Lord Campbell having summed up,

"The jury at once returned a verdict of *Not Guilty*.

"Lord Campbell said, he entirely concurred in the verdict. He must say that indictments for perjury, with regard to answers in Chancery, had been carried to a most scandalous extent. An answer in Chancery came, and this was instantly followed by an indictment for perjury. If Mr. Mellersh's character should hereafter be brought in question, and it should be said he had been indicted for perjury, he thought the jury would say his character ought not to be in the slightest degree affected by what had taken place to-day. (This was followed by loud applause.")

"THE QUEEN *v.* MELLERSH.

"In another indictment for perjury against the same defendant no evidence was offered, and the defendant was acquitted."

"THE QUEEN *v.* MELLERSH AND OTHERS.

"This was understood to be an indictment for a conspiracy.

"No one appearing for the prosecution, the defendants were acquitted."

APPENDIX B.

Extracts from Eighth Report of Her Majesty's Commissioners on Criminal Law, dated 5th July, 1845, *presented to both Houses of Parliament by command of Her Majesty, wherein they report questions circulated by them, and amongst them the following:*

"2ndly. Or as regards the different modes of formal charge against a party in a criminal proceeding.

"Whether such charge be founded on a preliminary inquiry, as in the case of a bill or presentment by a Grand Jury, of a coroner's inquest, or presentment at a Court leet, or be contained in a criminal information filed *ex officio* by the proper officer of the Crown, or granted at the instance of a private relator.

"And in particular your attention is requested to the question, whether, where a verdict is found against a party upon a coroner's inquest or in any other, and what cases the finding of a bill by a Grand Jury might be conveniently dispensed with."

Extract from Answers of M. D. HILL, *Esq., Q.C., p.* 210.

"In regard to all cases in which depositions have been taken, I think Grand Juries might safely be dispensed with, except in cases of treason and sedition."

Extract from Answers of LORD DENMAN, *Lord Chief Justice of England, p.* 212.

"2.—In answering this question, may I take the liberty of referring to an article which appeared on the subject, principally of Grand Juries, in the *Edinburgh Review*, in the autumn of 1828. That article contained the opinions which I then formed, after some years' experience, in an office of Common Serjeant, and

I have seen no reason to think them erroneous. I can see no benefit produced by Grand Juries, but the co-operation of the higher and middle classes in the administration of justice. But this I estimate very highly, and hope it may be preserved through all changes by some means or other" (*a*).

"I see no reason for laying any indictment before a Grand Jury, when the coroner may have committed the party supposed guilty on an inquest valid in law."

Extract from Answers of E. E. DEACON, *Esq., Barrister-at-Law, p.* 216.

"After the facts of a case have been properly sifted in one preliminary inquiry, I think that a prosecutor should not be further troubled until he is called to give his evidence in the Court which is finally to decide upon the guilt or innocence of the accused party. It follows, therefore, that the finding of a bill by a Grand Jury might be conveniently dispensed with after a previous inquiry before the committing magistrate, and a certificate under his hand, that the case is a proper one to go before a jury."

Extract from Answers of J. BARSTOW, *Esq., Barrister-at-Law, p.* 222.

"2nd Question.—Without desiring to speak disparagingly of ancient institutions, I am bound to say, as the result of my experience, that practically I see no advantage whatever in the tribunal of Grand Jury as at present worked. The secrecy is one of my principal objections.

"After a preliminary inquiry ending in a commitment or other equivalent proceeding, I think the accused might properly be placed upon trial without the intervention of a Grand Jury.

"I can see no objection to the putting a party upon his trial on the coroner's inquisition alone, if proper care be taken in the drawing up of the inquisitions."

(*a*) The means might be those pointed out in the evidence of S. R. Bosanquet, Esq., *post.*

Extract from Answers of P. BINGHAM, *Esq., Magistrate of the Police Court, Worship-street, p.* 223.

"On the second head of inquiry in your letter, it seems to me that where there has been a committal or holding to bail by a magistrate, the finding of a bill by a Grand Jury might commonly be dispensed with.

"The inconvenience occasioned by the Grand Jury system, as far as such bills are concerned, is great and manifest, and it would be difficult to point out any advantage attending it.

"The Grand Jury, composed of persons for the most part uninstructed in the law, are assembled with much trouble and expense to themselves, for the purpose of deciding on the *ex parte* statement of the prosecutor and his witnesses, whether there is sufficient reason for putting an accused person on his trial.

"But before the bill has been presented to the Grand Jury, this inquiry has been made by the committing magistrate, himself a person instructed in the law, or having a clerk so instructed to assist him, and made under circumstances which afford a far better chance of arriving at a correct conclusion than those under which the case is presented to the Grand Jury; for the Magistrate has the accused before him, and from his statements and demeanour alone, is often enabled to form a conclusive opinion as to the justice of the charge.

"The Grand Jury never see the accused; are not in general made acquainted with the proceedings before the magistrate, and are often under considerable difficulty from the want of legal knowledge. It happens repeatedly that bills are thrown out because the witness whose testimony compelled the magistrate to commit, is not presented to the Grand Jury.

"On the other hand, the rejection of a bill by the Grand Jury is of little advantage to a person unjustly accused; his innocence can only be established and his safety secured by a verdict of not guilty. The rejection of the bill only shows that the evidence presented to the Grand Jury was considered by them incomplete, but the suspicion raised by the charge still remains, and the accused is liable to be proceeded against afresh, whenever the prosecutor can supply the requisite testimony.

"As the police magistrates in the metropolitan district have, for the most part, been trained in the profession of the law, and

may therefore be presumed to make committals on sufficient investigation, the experiment as to dispensing with presenting bills to the Grand Jury in such cases might conveniently be made in the Central Criminal Court; and as that Court also deals with committals from other magistrates in the county of Middlesex, it might be ascertained, upon a small beginning, whether it would be expedient to extend the experiment to the kingdom at large. No alteration in practice would be requisite up to the preparation of the indictment, when in certain cases to be specified by statute, the prisoner might be called on to plead without the intervention of a Grand Jury.

"The above suggestions are the result of a careful observation of facts, the statement of which would extend to an inconvenient length if I were to attempt to comprise them in any letter, but I shall be ready at any time to communicate the details orally."

Extract from Answers of S. R. BOSANQUET, *Esq., Barrister-at-Law, p.* 228.

"Question 2. Grand Jury.—I think that the finding of a bill by the Grand Jury might be dispensed with in all cases where there has been a commitment for trial by a Justice, or a verdict has been found against a party on a coroner's inquest, for the following among other reasons:—

"The original use of a Grand Jury seems to be superseded by the comparatively modern practice of taking examinations and depositions upon oath and in writing by the committing magistrate.

"Formerly, examinations were not taken upon oath, and probably might not be.

"One use of the Grand Jury was to save innocent persons from lengthened imprisonment till the coming of the Justice in Eyre, perhaps at the end of three years.

"The Grand Jury being overwhelmed with the multiplicity of bills, are unable to give proper attention to them.

"Not having the depositions or the prisoner before them, nor the assistance of any one conversant with the matter (unless the committing magistrate happen to be present), they have a very imperfect knowledge of the case.

"The Grand Jury affords the most convenient opportunity for

compounding felonies, and shelters witnesses wilfully concealing the truth.

"From the above causes, many guilty persons escape trial; and, at the same time, the Grand Jury being taken from one limited class of society, they are open to impressions which are not unfrequently prejudicial and unjust to innocent persons.

"I have already observed upon the saving of expense in prosecutions consequent upon the dispensing with the Grand Jury.

"If Grand Juries were dispensed with altogether (which seems to be advisable), the magistrates of the county ought to give their attendance at the assizes, and the judge should address the whole body of magistrates, as he now does the Grand Jury, on matters relating to alterations and the administration of the law; and the whole body of magistrates should consider and make presentment of matters relating to the general state and police of the county.

"The dignity of the magistracy, and the most important services of the Grand Jury, would be maintained by this means; and greater time and attention would be given to those matters which chiefly render the attendance of the magistrates desirable."

Extract from Answers of R. E. BROUGHTON, *Esq., Magistrate of the Police Court, Worship-street, p.* 238.

"Question 2. Grand Jury.—The whole subject of the Grand Jury, in the Metropolitan Police District, is one of great importance, and its mischievous effects upon crime, and through crime upon public morals, deserve serious consideration. The first thing to be considered is the origin of its institution; it appears to have been a meeting of magistrates and country gentlemen, when the former knew but little of the law, to talk over and decide upon the propriety of their commitments, and to transact other county business, and, as such, may still be useful in the country; but nothing can be more unnecessary than its application to the Central Criminal Court, and its immense district.

"The charge against the prisoner is first heard before a professional magistrate in open Court, in the presence of the prisoner, often assisted by counsel or attorney; the whole defence is entered upon, and then the case is sent to the petit jury for trial, sometimes after two or three hearings; but how strange does it appear,

that, after such a sifting, it should go before a body of merchants and traders, unknown to each other, and generally unused to the administration of justice, meeting often at a great inconvenience to themselves, and having sometimes 300 or 400 cases to dispose of in a week; but to them it must go before it can reach the petit jury; and, if there were no such institution, would not a proposal to have one be considered absurd? Now, if there were no mischief arising to the public interests from the institution, there may be reasons why it should be let alone; but I have no doubt but that its existence does harm. Old thieves, who know that they have no chance before the magistrate, when there is a case, look to the Grand Jury for the chance of the bill being thrown out, sometimes by working upon, and sometimes bribing the prosecutor or principal witness. Such cases have been shown to have happened. It must be remembered that the Grand Jury inquire with closed doors, so that there is no check upon a witness whilst giving his evidence; and it must also be remembered that their inquiry is only on one side of the question.

"But the Grand Jury is further objectionable, by the great and increased expense of prosecutions, and by the additional loss of time to tradesmen and others who prosecute. The attendance before the Grand Jury makes the difference always of one day, and sometimes two or three days; it is an attendance which is found very inconvenient, and is much complained of. In trifling and common cases of felony, prosecutors often express a wish that it might be disposed of summarily; they feel that, if we have not such a power, we ought to have it; they frequently become tired of their three attendances before the magistrate, the Grand Jury, and the Court, and declare that they will never prosecute again if they can avoid it.

"The Grand Jury thus tends to increase the charge upon the rates of counties; this induces the county magistrates to cut down the compensation to witnesses, which is now reduced to so low a point as to be no compensation at all to tradesmen carrying on business. All this must have its effect upon crime, and must, to a certain degree, operate as a premium upon it, by creating a disinclination to prosecute in common cases.

"The above are some of the objections to the Grand Jury system in the Metropolitan Police District, to which my present

observations are confined. It must be borne in mind that the whole system for the administration of criminal justice *within* this district is different from the administration without it. I see no reason, therefore, if the Grand Jury system be found objectionable, why that also should not be changed. I am satisfied that the security of the prisoner does not require it (the Grand Jury), and that it has nothing to do with the great national attachment to trial by jury."

Extract from Answers of Messrs. PHILCOX and BALDOCK, *Clerks to Magistrates for the Northern Division of Hastings, p.* 239.

"2ndly. We think the mode of formal charge by bill before a Grand Jury is open to abuse. There is every reason to believe that in some cases witnesses, on appearing before the Grand Jury, have suppressed the truth, and thereby caused the bill to be ignored: the comparative secrecy of the investigation giving facility to such conduct."

Extract from Answers of J. ROSCOE, *of Huntsford, Cheshire, Coroner for Stockport Division, and Clerk to the Magistrates, p.* 251.

"2nd. The preliminary inquiry by a Grand Jury has always appeared to me to have been continued beyond the period when such an institution was possibly a safeguard, or thought to be so, to the public. It also seems to involve an absurdity, inasmuch, as practically, it submits questions of law and fact to a tribunal by no means well calculated to decide upon the former, whatever may be its competency, with reference to the latter. Then the inquiry is *ex parte;* there is no previous information before the jury to lead to a knowledge of the facts to which the different witnesses are expected to depose; and their inquiries are necessarily ill-directed and made at random, and they can know nothing of the answer which a prisoner or defendant is prepared to give to the case. The inquiry of a Grand Jury is consequently defective; and, after all, what is the benefit? If the Grand Jury find a true bill the prisoner must be tried, so that no advantage is gained by their intervention; and if they ignore a bill it is not so satisfactory as if the prisoner had been acquitted,

after a fair inquiry, in the face of the country. And it may be added, that the cost of prosecutions is materially increased by the intervention of Grand Juries. To remedy this (supposing a public prosecutor to be appointed) I would propose that he should prepare and file an indictment (which should be a simple charge of the offence, freed from technicality) without a preliminary swearing of the witnesses, but indorsing their names upon the indictment, and without the intervention of a Grand Jury. Witnesses would consequently only be sworn once, that is, when they come forward to give their evidence on the trial, and thus an unnecessary frequency of oaths would be avoided. Charging an offender doubly, by an indictment and a coroner's inquisition, has always appeared to me to be absurd; for if the indictment be good, the inquisition is useless, and if the latter be good there is no necessity for the indictment. There would, in practice, perhaps, be found some inconvenience in relying upon coroner's inquisitions without indictments; for some coroners, not being legal men, are not, from their habits and studies, fully competent to prepare a strictly legal inquisition, and many inquisitions are in consequence undoubtedly informal. It would possibly be better in practice to make the coroner's inquisition a simple record of the jury's finding, liable to be quashed, like a conviction, and like a conviction not to be used as a process: and in cases where further criminal proceedings become requisite, in consequence of a commitment for murder or manslaughter, then to carry on such further proceedings through the medium of an indictment. The coroner should, in that case, be required to forward his depositions to the public prosecutor in the same manner as a magistrate.

"Some years ago, being considerably engaged in the practice of criminal law, in consequence of being the clerk of a large district, since divided, my attention was so forcibly directed to the inconvenience of the present system that I prepared the draft of a bill for altering the law, intending to submit my views, through that medium, to the then Secretary of State, but which I did not do, owing to the inquiries which therabout were commenced, in consequence of the appointment of the Law Commission. It would be presumptuous in me to send a copy of that draft, as embodying many of my views on the subject of

this inquiry, unless I were requested to do so; but, as I have the draft by me, I am ready to furnish a copy, if required."

Extract from Answers of Mr. JOHN MERCER, *Coroner and Clerk to the Justices for the Borough of Deal, p.* 268.

"The finding of a bill by a Grand Jury might conveniently and safely be dispensed with in every case with a stipendiary magistracy, but not otherwise."

Extract from Answers of Mr. R. ALMACK, *Melford, Suffolk, Clerk to the Magistrates.*

"Where a verdict is found upon a coroner's inquest (and, in my opinion, in almost every other case of commitment for trial), the finding of a bill by a Grand Jury may be dispensed with. At present, Grand Juries, however anxious to do what is right, are often left in the dark as to the real facts, and even as to the aspect of the case when brought before the magistrate. Their inquiry is private, and they have not necessarily the depositions before them, and if they had, much will depend on the habits of business of the accidental chairman (a dangerous uncertainty at Quarter Sessions), who may never have heard of the case before, and the witnesses (who are called in as they happen to stand on the back of the bill), from ignorance, or forgetfulness, or fear, may leave untold the most material point, and the return may be, 'No true bill,' in a case which, if tried in Court, would have been certain conviction. The evils pointed out are, by accident, often avoided, because (at the assizes) the committing magistrate may be on the Grand Jury, and able to explain the string of evidence, and he may remind them, that with the depositions there is a confession in writing which they ought to see; or some person on the Grand Jury may have heard of the confession; or there may be an attorney for the prosecution who will remind the clerk of assize, or clerk of the peace, that without the confession the bill may be ignored. The judges often, indirectly, hint at another objection to Grand Juries; they remind them that they are not to try the case, and to concur in a verdict of guilty. In fact, they are to say whether the case is proper to be tried,—and a magistrate has already, by his commitment, certified his opinion in writing to that effect."

Extract from the Answers of W. CODD, Jun., *Maldon, Clerk to the Magistrates of Dengie Division, p.* 277.

"Where a party is committed upon a coroner's warrant, the interference of a Grand Jury seems to me altogether unnecessary, as the case will have already undergone investigation before twelve or more men and a supposed competent officer."

Extract from the Answers of Mr. JOHN WOODHOUSE, *Clerk to the Magistrates, Bolton, p.* 278.

"2nd.—I have no doubt, but I am not prepared to substantiate the fact, that many guilty persons escape punishment by reason of the suppression of important evidence from the Grand Jury. It frequently happens that the guilt of an offender can only be substantiated by the evidence of an accomplice or acquaintance, or some other person whose integrity may be easily assailed; and inasmuch as Grand Jurymen (I am speaking more particularly of a sessions jury) are generally in utter ignorance of the particulars of most cases which come before them, they do not possess the means for closely investigating a charge or examining a witness, and arrive at conclusions which a better exposition of the real circumstances would prevent. As the more serious charges are now sent to the assizes for trial, I am of opinion that at the Quarter Sessions the Grand Jury might be altogether dispensed with."

Extract from the Answers of Mr. WM. DOWNES, *Clerk to the Justices of the Borough of Ludlow, and Coroner for the Borough, and for the County of Salop, p.* 279.

"I am decidedly in favour of stipendiary magistrates being appointed throughout the kingdom.

"I would abolish the jurisdiction of Grand Juries in such cases, and a stipendiary magistrate should preside as chairman at every Quarter Sessions.

"I would dispense with the finding of a bill by a Grand Jury, in case of a verdict upon a coroner's inquisition."

Extract from the Answers of Mr. J. T. BISHOP, *Clerk to the Magistrates, Melton Mowbray, p.* 287.

"With regard to the presentments of Grand Juries at the Assizes and Quarter Sessions, I am decidedly of opinion that, except in crimes of great magnitude, there is no necessity whatever for any preliminary inquiry by them.

"In all petty offences, I think Grand Juries are very often an impediment in the way of justice; as I have many times felt confident in cases in which I have been concerned in prosecutions, that parties, if sent at once before the petty jury, would have been convicted, and yet the bills have been ignored by the Grand Jury. The committing magistrates wade through the evidence and sift it minutely, and in such a manner as cannot be done during the short space of time which the Grand Jury devote to a case. I believe that Grand Juries in many instances throw out a bill, because they think the offence too trifling for a prosecution, and yet the offender may, many times before he is detected, have been plundering the prosecutor to a great extent, which fact cannot be brought under the notice of the Grand Jury.

"It may be essential for the ends of justice in crimes of magnitude, that a preliminary inquiry should take place before a Grand Jury or some other competent tribunal; but the only benefit which I conceive is derived from it is, the privilege of allowing a prosecutor, in case the bill is thrown out, an opportunity of obtaining further evidence at a future time to present another bill."

Extract from the Answers of Mr. HOLDING, *of Kingsclere, Clerk of the Petty Sessions, p.* 290.

"2ndly.—The partial evidence given in the privacy of a Grand Jury chamber no doubt sometimes causes the rejection of a bill by a witness favouring a prisoner.

"Where bills are found by a coroner's jury, it would appear unnecessary to present a bill to a second jury before trial."

Extract from the Answers of Mr. R. READ, *Llanrwst, Denbigh, Magistrates' Clerk, p.* 292.

"2ndly.—As regards the different modes of formal charge

against a party in criminal proceedings, I should retain them, except that where a party has been bailed, or committed by a magistrate, I do not see the use of the finding of the bill by a Grand Jury."

Extract from the Answers of J. P. COBBETT, *Esq., Barrister-at-Law, p.* 297.

"Respecting the Grand Jury there is but one thing upon which I would remark, that is, the question of the use of having any Grand Jury at all. Although I do not, in general, approve of abolishing what has been long established, I am aware that Grand Juries are not now of the same practical benefit that they once were, and that their office, as compared with what it was, has in effect been in great part abandoned. Some who have maturely considered this question are for wholly doing away with the Grand Inquest, and I do not see that any great harm need be apprehended in that case. The greatest possible evil, however, in this institution, appears to me to be involved in that negative, or 'no bill,' which Grand Jurors are so prone to indorse upon whatever is presented to them against people of their own class. On the other hand, this is sometimes so glaring that, without putting the great man in jeopardy, their example cannot but inspire the little with a disgust that is wholesome, because it must help to keep us all alive to the advantage of being tried, not by our superiors, but by our peers. I know of an instance in which a crowd of labouring men were indicted at the assizes for having, during an election riot, committed the then capital offence of demolishing a house. At the same assizes there were also bills preferred against a number of gentlemen for a misdemeanor, in having hired and abetted the same rioters, and made them drunk for the purpose. The Grand Inquest found all the bills against the labourers "true," but found "no bill" as to any gentleman. I cannot say whether they had any evidence or not against the latter; but there could, I presume, have been no very strong case against the former, for the whole of the labourers were recommended to plead guilty, that they might the more speedily be discharged, which accordingly took place."

Extracts from the Answer of Mr. G. C. FLETCHER, *Chief Clerk of the Hammersmith and Wandsworth Police Courts, and Clerk of the Special Session for the Wandsworth Division Surrey, p.* 303.

"2.—In my opinion the Grand Jury and coroner's inquest may generally be dispensed with, and the examining magistrate or justice, or the public prosecutor might prepare a document in the nature of the bill of indictment found, and return the same to the Court, to be tried by the petty jury. If the prisoner confess his guilt before the examining magistrate, a record thereof might be returned to the Court, and if the prisoner still confessed his guilt, judgment might be passed without trial by the petty jury."

Extract from the Answers of Messrs. STONE *and* WALL, *Clerks to the Tonbridge Wells' Branch of Magistrates, p.* 306.

"2ndly.—We think the Grand Jury might be dispensed with altogether, so far as bills of indictment are concerned. There are many reasons for this course which we refrain from enumerating, and we know of none against it."

Extract of Answers from Mr. JAMES BEESLEY, *Town Clerk, Coroner, and Clerk to the Magistrates of the Borough of Banbury, p.* 317.

"2nd.—In the hands of a cunning lawyer, a Grand Jury can be made an engine of great oppression; nay, it has been so made; a bill was presented against numerous parties for a riot (there having been no previous inquiry before magistrates); they went prepared to meet the case, so far as they could collect it, from the names of the witnesses on the indictment; but many of these witnesses were not called, others were called, and a conviction was obtained, not on the facts in evidence before the Grand Jury, but on other matters to which the attention of the parties had not been drawn, some of which were capable of explanation, and others could have been proved to be false, but there was not the opportunity."

Extract from Answers of the Committee of the Justices Clerks' Society, p. 321.

"All criminal charges are now very fully and closely investigated before one or more justices of the peace on the spot, and opportunities generally afforded to prisoners by professional assistance, and exculpatory evidence to disprove the charges if unfounded.

"Independently of the question of the inquiry before a Grand Jury at all being necessary, there are circumstances which, under the present mode of conducting the inquiries before that body, are very objectionable.

"A number of gentlemen, amounting to twenty-three, have a formal technical indictment placed before them, which conveys no intelligible particulars of the transaction, and no statement of the evidence by which the legal charge is intended to be supported, and the only clue is contained in the bare names of the witnesses on the back of the bill.

"From the haste with which these inquiries are often conducted in a crowded room, it frequently happens that bills have been ignored in the clearest cases.

"The following brief statement will exemplify this. A man was indicted for stealing bricks. The owner of the bricks was examined by the Grand Jury, and in answer to the question whether he could identify the bricks produced as his property, said he could not, and without examining another witness the bill was ignored; whereas the policeman, whose name was on the back of the bill, but was not called, would have proved that he saw the prisoner take the bricks from the prosecutor's premises.

"To show the difficulty in which Grand Jurors are often placed, the committee have personal knowledge of the fact, that, contrary to the strict rule of proceeding, the attorney for the prosecution has been frequently admitted into the Grand Jury room during the inquiry, to marshal the evidence, and explain the circumstances of the case.

"The discontinuance of the Sessions Grand Jury would be a boon to the individuals who are called upon to serve on it, they being selected from a class to whom the absence from home or business, and the expense of a journey to and from, and stay at

the county town are objects of moment; and their release from that duty would be a reason for their serving on the petit jury, by which that really important and essential branch of our criminal procedure might be very considerably improved by the infusion of a better educated class of individuals, than that of which it is very frequently at present composed.

"A saving to the country would be also effected by the discontinuance of the Sessions Grand Jury, in shortening the stay of prosecutors and witnesses at the county town."

Extract from Answers of Mr. J. M. BLAGG, *Clerk to the Magistrates, Cheadle, Staffordshire, p.* 326.

"My next improvement is to dispense with Grand Juries, and to send every case to trial at once, upon the charge as transmitted by the committing magistrate, and contained in the indictment, without the present previous inquiry by the Grand Jury; and I would originate all indictable charges whatever, with an open charge before magistrates.

"I am firmly of opinion, from actual practice and experience, that Grand Juries are merely an impediment and obstruction in the course of justice, and oftentimes a means of sore oppression. The only advantage I ever heard attributed to them is, that they sometimes save an innocent man from the ignominy of a public trial; and it is said that no man ought to be publicly tried unless the prosecutor can convince the majority of twenty-three impartial men that there is a very strong case against him.

"Now I will put the case to every individual who reads this paper, and ask him whether, in case he should be committed to prison upon a false charge, he had not much rather be acquitted in open Court, confronted by his prosecutor before the face of the whole public, and have it shown to the world that there was no proof against him, rather than have the bill thrown out by the Grand Jury, sitting in a private room, and conducting their inquiry no one knows how, where he might be liable to the imputation of having connived with the prosecutor and witnesses, or that he escaped by the favour of some of the witnesses not telling the whole truth, or from the Grand Jury not knowing how to frame their questions so as to elicit the important proofs on which the case hinged.

"In short, it is unquestionably better that every prosecution should be disposed of in open Court. It is well known that all prosecutions that are compromised are disposed of by losing the bill before the Grand Jury, and the greatest facility is therefore afforded to such proceedings.

"Then it is notorious that many guilty characters get off at every sessions and assizes, from Grand Juries not knowing how to elicit the truth, and from crafty witnesses, who know they cannot be indicted for perjury before the Grand Jury, either keeping back or misrepresenting the facts, and not unfrequently at Quarter Session by Grand Jurors mistaking their functions or the effect of the evidence.

"Then, in the cases of perjury, conspiracies, and various misdemeanors that most frequently originate in ill blood between the parties, defendants are often most seriously oppressed by bills being found upon this *ex parte* secret examination, and the defendants put upon their trials at a ruinous expense; when it turns out that there is little or no evidence against them, and there certainly would have been no committal if an open inquiry before magistrates had taken place, instead of that before a Grand Jury.

"It is, in short, a radical objection to Grand Juries, that parties may swear before them with impunity whatever they please; and it is well known that Grand Jurors have often been astonished at the great difference in the evidence given before them and that given afterwards in open Court. In addition to these serious and vital objections, the process of going before the Grand Jury is a great trouble, inconvenience, and impediment to persons who happen to be prosecutors and witnesses; and it is no little annoyance to the persons who fill the office of Grand Jurors to be called from their homes and business for so long a period, and so frequently; so that, in this respect, it would be a great relief to a numerous class of persons if the office were abolished; and, moreover, it would greatly shorten the assizes and sessions."

Extracts from Answers of Mr. THOMAS KELLY, *Clerk to the Magistrates, Modbury, Devon, p.* 328.

"Question 2. Answer.—I think all the duties of the Grand Jury might be safely dispensed with.

"The present mode of inquiry by the Grand Jury in cases of

felony appears to me highly objectionable. It must be conceded, that, in most instances, gentlemen in the commission of the peace are as fully competent to judge of a *primâ facie* case as the persons composing the Grand Jury at sessions. If there be sufficient evidence before the committing magistrate for sending the party to trial, it seems to me a second preliminary inquiry is not only useless but objectionable, and particularly as regards the prisoner; for if, in addition to the magistrate's commitment, a Grand Jury also find a true bill, a verdict of acquittal by a petty jury will have but little effect in removing the stain cast upon the character of an innocent party by these two preliminary solemn inquiries. And I have known, in more instances than one, bills thrown out for want of knowing what legally constituted the offence. I have obtained this admission from the jurors themselves.

"An intelligent petty jury is fully competent to arrive at a true verdict, for they are in no case influenced (or, at least, ought not to be) by the finding of the Grand Jury.

"But, in place of the present petty jury, I would substitute the class of persons now composing the Grand Jury at Quarter Sessions. In the advanced state of society, the class of men from which the petty jury is now chosen is far too low for the scale of intellect and education."

Extract from the Answer of Mr. J. LAYCOCK, *Clerk to the Magistrates at Huddersfield, p.* 329.

"I am of opinion that the finding of a bill by a Grand Jury might in very many cases (perhaps in all) be dispensed with; it doubles the costs of prosecutions; it wearies the witnesses with attendance; it makes the gentlemen think that it is beneath them to serve on petty juries. The advocates for it say a man ought not to be put on his trial without a probable cause; has not the committing magistrate reduced the charge into writing? He is liable to an action if he commits without probable cause. The great bulk of commitments are now made at police offices, to which the public has access. The prisoner has in many cases a sharp attorney, who would only be too glad to find the magistrate tripping."

Extracts from Answer of W. RAMSHAY, *Esq., Barrister-at-Law, p.* 338.

"2. A Grand Jury appears to me to be worse than useless. I have known a judge in a case of murder kept waiting a whole day idle in Court whilst the jury were deliberating whether to find a bill or not. The bill at last was thrown out.

"I recommend the abolition of a Grand Jury in all cases."

Extract from Answers from WM. ADAMS, *Esq., Justice of the Peace for the County of Herts, p.* 342.

"As regards question 2.—I would beg to draw your attention to the presentment of the Grand Jury of the Surrey Sessions held on the 28th instant, and especially to the reasons (1) and (2) in that presentment, and to state further—

"1st. That I consider there is no check upon a corrupt witness, as to the evidence he may give before a Grand Jury, even should it be in direct contradiction to his evidence before the magistrate.

"2nd. That the Grand Jury have no data from which they can examine a witness or educe his evidence.

"3rd. That very many honest witnesses, especially among the agricultural classes, from being asked few or no questions, and from timidity, come away from the Grand Jury without giving half the information they are in possession of.

"From these three causes it may frequently happen (and it often has), that the Grand Jury may ignore bills, when, if the prisoner were put upon his trial, his guilt would be established beyond all doubt. This has been so strongly felt, especially in the case of Grand Juries at the Sessions, that, in very clear cases, professional men have said, 'The only difficulty was in getting the man put upon his trial.' The magistrates in this neighbourhood have often experienced this."

Extracts from Appendix C., *containing article from* LAW MAGAZINE, No. LXIV, *setting forth Answers of* J. PITT TAYLOR, *Esq., to the Questions of the Commissioners on Criminal Law, p.* 357.

"The first two questions which, for the sake of convenience, we have taken together, relate to the present mode of instituting inquiries on criminal charges, and we venture to commence our observations on this head by offering a suggestion that will perhaps startle some of our readers. We would abolish Grand Juries, not only because we consider them to be utterly useless, but because we conceive that in many cases they defeat the ends of justice; in many they are instruments of oppression, and in all they create a large expense, and are productive of much inconvenience.

"According to the existing practice, prosecutions by indictment may commence either by bringing against the defendant a public accusation before a magistrate, or a private accusation before the Grand Jury. Let us imagine that the first course is adopted. Complaint having been made to a magistrate, and the accused having been summoned or apprehended, the prosecutor and his witnesses are called upon, in a public court, and in the presence of the defendant, to state on oath the circumstances on which the charge is founded; the accused, or his legal adviser, has then an opportunity of cross-examining the witnesses, of calling others to contradict them, and of making any statement with the view of explaining, justifying, or disproving the charge. If the facts be intricate, if important witnesses be absent, or if time be required for a more careful scrutiny, the inquiry may be postponed to some future day, till, at length, the case having been fully and openly heard on both sides, and the testimony having been reduced into writing, the magistrate decides whether or not the circumstances are sufficiently suspicious to warrant their sub-

mission to a jury. If this decision be in the negative, the accused is discharged; if in the affirmative, he is committed, or bailed.

"Such being the nature of a preliminary investigation before a magistrate, it would seem that, for the purposes of justice, no further inquiry would be requisite previous to the trial,—but this is not the law. Before the case can be presented for the consideration of the jury, the prosecutor and his witnesses, who may either be the parties previously examined, or different persons, must go, one by one, before a secret tribunal, composed of twenty-three gentlemen unacquainted with the law, and repeat the substance of their accusation in the absence of the accused. No means are provided for testing the accuracy of their statements; the depositions taken before the committing magistrate, excepting at the Old Bailey, are not before them; neither, with a similar exception, is any person present, beyond the Grand Jurors themselves, to marshal the evidence, or in any way to conduct the proceedings. If, after this inquiry, twelve out of the twenty-three jurors consider that a *primâ facie* case of guilt is established, a true bill is found, and the indictment is tried; if a like number entertain a contrary opinion, the bill is rejected, and the prosecutor must then either abandon the charge or try his fortune before another Grand Jury on some future occasion.

"Now, if we contrast the different modes in which these two examinations are conducted, is it not obvious that, even supposing no collusive practices to exist, and assuming the committing magistrate to have no more legal experience than the members of the Grand Jury, his decision is more likely to be correct than theirs; that where they agree with him they do not corroborate him, where they differ from him they are probably wrong: thus they can seldom do good, and may often do evil. But, if this be the case when the committing magistrate is a mere justice of the peace, with how much greater force does the argument apply when, as in London, Liverpool, and Manchester, he is a professional man, well acquainted with the rules of evidence, and admirably fitted, from long experience, to unravel the tangled thread of human testimony.

"Besides, it is idle to suppose that frauds are not daily practised on the Grand Jury. At the preliminary inquiry before the magistrate the defendant has an opportunity of ascertaining who

are the witnesses that depose against him, and what is the nature of their evidence. If, then, he be admitted to bail, what is to prevent him—if he be committed to custody, what is to prevent his friends—from tampering with the witnesses? It would be useless, or at least highly dangerous to attempt to do so, if they were only to be examined on the trial, because on that occasion, the evidence being given in a public Court would be publicly known, and the depositions being returned to that Court, any material variance in the testimony would be immediately detected, and would render the witnesses liable to an indictment for perjury. But the case is far different before the Grand Jury. There, the jurors being sworn to secrecy, and each witness being examined alone, who is to discover any falsehood that one or more of them may be bribed to utter? Yet if any unexplained inconsistency appear in the narrative, the Grand Jury can scarcely fail to doubt its truth, and the consequence is that the bill is ignored. The prosecutor has no means of avoiding this result. He knows that some of his witnesses have betrayed him; perhaps he has reason to suspect the individual who has done so, but he has no remedy. An indictment for perjury must specify the words spoken; and how can he discover what those words were? The law, indeed, may say that a false witness before a Grand Jury is subject to prosecution, but the law does not add how a conviction can be obtained; and we believe that, with one solitary exception, no trace can be discovered of such a proceeding.

"Again, if the witnesses are of such a character as to preclude the hope of their being successfully suborned, the accused may still escape, provided he can only bribe; and this is no difficult matter,—some person to go to the prosecutor, and pretend that he is acquainted with facts corroborative of the charge; these facts being narrated with the semblance of zeal, the confidence of the prosecutor is gained; the defendant's friend, with the witnesses previously examined, is sent before the Grand Jury, and there, by an artful statement, throws such a doubt on the matter that no bill is found. It is true that both these last-mentioned abuses might be partially avoided, either by making the Grand Jury perform their functions, as in former days they frequently did, in an open *Court*, or by directing that the attorney for the Crown should in all cases attend them with the depositions, and

conduct the examination of the witnesses, and by distinctly empowering him, as also the Grand Jurors themselves, to repeat the evidence of any witness whom it might become necessary to indict for perjury; still the inutility of the inquiry must remain as before: and when we find, as we presently shall do, that this useless machinery is productive alike of a large expense to the country, and of serious inconvenience to witnesses, are we not justified in advocating its immediate abolition?

"Next. Let us suppose that the prosecutor in the first instance goes before the Grand Jury. In this case, the earliest intimation of the charge which the accused receives is, that a bill is found against him. The particulars are kept secret; who his accusers are, or what they have testified against him, he has no means of discovering; indeed, he cannot, except in some cases of high treason, so much as demand a copy of their names; nor in cases of felony, is he entitled even to a copy of the indictment. The law, which now in fairness enables him, immediately after the investigation has closed before the magistrate, to obtain a copy of the depositions at a small cost, and at the trial to inspect these depositions without any cost at all, refuses any such indulgence in the case of a bill being found without a previous examination. That which the Legislature admits to be just in the one case, it wholly disregards in the other; and thus while a man who has been publicly accused before a magistrate, has the simplest means of showing the character and motives of the witnesses, and of confuting the charge against him; a party, secretly attacked before the Grand Jury, is placed on his trial under circumstances of cruel disadvantage, and must rely on chance rather than the purity of his conduct to establish his innocence. But this is not all. A prosecutor who prefers a bill before the Grand Jury, is not compelled to proceed to trial in the event of its being found; neither are his witnesses bound over to appear and testify in Court: a door is consequently opened to the most disgraceful practices. A bill found by perjury becomes the instrument of extortion to the innocent, but timid man; a bill found by true testimony, is employed with still greater power to wring money from the guilty.

"Passing now to the question of expense, we trust that we shall be able, without entering into much detail, to demonstrate that by

the abolition of Grand Juries the country would be saved a very large sum, which might be advantageously employed in practical improvements. Prosecutors and their witnesses are now summoned to attend the assizes and sessions on the opening day; and, according as the calendar is heavy or light, they are enabled to go before the Grand Jury on the first, second, third, or fourth day of the proceedings, and must then, in the event of a bill being found, wait till the case is called on in Court. The effect of this twofold examination is, that if many prisoners are to be tried, the majority of the witnesses must inevitably be detained for several days; and even at the sessions, where the business is comparatively light, an interval of three or four days will constantly elapse between the private examination of a witness before the Grand Jury and his public examination in Court. As an example of the working of this system, let us take the assizes at York. The time usually fixed by the judges for clearing the gaol is a fortnight, and this is seldom found more than barely sufficient. The Grand Jury are in general discharged on the third or fourth day. The indictments found may amount to 130; and, allowing five witnesses in each case, the number of persons for whose loss of time the county is called upon to pay are above 600. The poorest of these witnesses are allowed 7*s.* 6d. per day; gentlemen, chief constables, and professional men, a guinea; and surgeons, two guineas. The costs at each assize for conducting prosecutions is about 6,000*l.*, each case averaging 45*l.* Now if, out of this sum, we allow 15*l.* to cover the fees of the Court, the counsel, and the solicitors (and in making this allowance we probably much overstate the real amount), and if we further deduct 2*l.* apiece for the travelling expenses of every witness, we have still a payment of 20*l.* on every prosecution for mere loss of time. If, then, we estimate the witnesses one with another at 10*s.* a head per day, we find that, on an average, they are retained about eight days; and this calculation is probably not very inaccurate, though the data on which it is founded are, to a certain extent, gratuitously assumed. Now, by the abolition of Grand Juries, by trying the prisoners in the order of their commitments, and by publishing successive lists, as in civil causes tried at Westminster or in London, of such indictments as will probably be taken each day, witnesses would seldom be kept from their homes above three

days, and frequently not more than one. From 10*l.* to 15*l.* would be saved upon each indictment, making an aggregate saving of about 3,000*l.* on the two assizes at York alone.

"At the Central Criminal Court the allowance for loss of time is much less, probably not exceeding on an average half-a-crown a day for each witness; but, as there are twelve sessions in every year, and on each occasion above 1,200 witnesses attend, the saving here also would be very great; for, supposing that the attendance of each witness was shortened by two days only (and this is the lowest supposition that we are warranted in making), the county rates would be diminished by at least 3,500*l.* a year. At every other Court in the kingdom the expense would be proportionably diminished.

"But this is by no means the only advantage that would result from the proposed change. Even where the highest allowance is made to witnesses for their attendance, it is, in a vast number of cases, wholly inadequate as a remuneration for the loss which they really sustain from neglecting their business; and if to this we add the personal annoyances to which they are subjected of standing about in cold passages, stifling courts, and crowded inns, can we be surprised that many should sacrifice their public duty to their private interest, and should allow crimes to remain unpunished rather than submit to the expense, vexation, and trouble, which a due investigation must entail upon them? And are we not right in asserting that it is alike the interest and duty of the Legislature to diminish as much as possible the annoyances to which witnesses are exposed?

"Besides, as Mr. Boothby has very properly observed, 'The public inconvenience of large bodies of the police being kept away from their duty for so long a time is seriously felt in large towns; and the extent of this evil may be partially estimated by referring to a return lately presented to the Privy Council by the Chief Commissioner of Police in Manchester, from which it appears, that, in the two years of 1840 and 1841, sixty-four Manchester police officers were detained at the Liverpool assizes for a no less period than 340 days, being on an average somewhat more than five days for each officer.'

"The only arguments which we believe can be urged in favour of the Grand Jury system are, first, that it has been established

for many years; and, secondly, that it is popular with the country gentlemen. Both these arguments deserve consideration; not, indeed, because they are founded on reason, but because they address themselves to what is far more powerful than reason, namely, to the prejudices, the sympathies, and the feelings of mankind. There is an instinctive tendency in the minds of most men to admire and reverence the wisdom of by-gone ages, and to cling with affection to those institutions which have stood the test of centuries. Such feelings are natural, nay, laudable, but they may be indulged too far. There is no doubt that, in the days of the Tudors and the Stuarts, the Grand Jury was the bulwark of English liberty. In those unscrupulous times, the judges being removable at the pleasure of the Crown, and petit juries being subjected to imprisonment and fine if they dared to find a verdict contrary to the direction of a dependent and sycophantic bench, a party who had become obnoxious to the reigning power could only hope for security through the medium of the Grand Jury; but, at the present day, when the judges are actuated by no personal fears or hopes, when petit jurors are at least as independent as members of the Grand Inquest, and when an enlightened press promulgates, and, by promulgating, controls, the proceedings of Courts of Justice, it is idle to suppose that the intervention of a Grand Jury is any longer necessary to protect the defendant from oppression and injustice.

"Then as to the popularity of the system. It may be very true that some, perhaps many country gentlemen, feel a certain satisfaction at being summoned on the Grand Jury. They regard it as a distinction, as a compliment, as a something that places them in a position somewhat superior to their neighbours; but surely we are justified in reminding them that the inquest to which they belong was not appointed for their sakes, but for the public benefit, and as it has ceased to be beneficial to the public, it ought no longer to be retained, though its retention may accidentally gratify their idle vanity.

"It will be in vain to urge that the institution of the Grand Jury is inseparably connected with that of the Common Jury, and that one cannot be touched without imminent peril to the other. Men will not now be deceived by mere similarity of names, but will bear in mind that the functions of Grand Juries

are to *accuse*, those of petit juries to *try* offenders, and that these duties are utterly distinct. Trial by jury is the law of Scotland as well as of England; yet no Grand Inquest is summoned to the north of the Tweed, excepting only on those rare occasions when criminals are charged with high treason; yet who complains in that country of injustice or partiality? In France, too, where trial by jury prevails, there is no institution analogous to that of the Grand Jury. During the fervour of the Revolution, there was a temporary partial imitation of that tribunal, under the name of a jury of accusation, but the experiment, meeting with very indifferent success, was soon abandoned; indeed, England and Ireland are we believe the only countries in the known world in which it is thought advisable to adopt this cumbrous machinery."